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No. 782

Supreme Court of the United States

October Term, 1945

THE STATE OF ILLINOIS, EX REL. [illegible], DIRECTOR OF LABOR, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS, EX REL. ROBERT L. GORDON, DIRECTOR OF LABOR, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The Circuit Court of Cook County, Illinois, entered no opinion. The opinion of the Supreme Court of Illinois (R. 41–54) is reported in 391 Ill. 29.

JURISDICTION

The judgment of the Supreme Court of Illinois was rendered on September 17, 1945. (R. 41, 55.) The time for filing a petition for a writ of certiorari was extended by the Court until January 16, 1946. (R. 56.) The petition for writ of certiorari was filed January 15, 1946. The juris-

diction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claim of the United States against the Advertising Review Publishing Company for unpaid capital stock taxes, unemployment compensation taxes, and insurance contribution taxes is entitled to priority by virtue of Section 3466, Revised Statutes, over state claims against the company for unpaid unemployment compensation contributions levied by Illinois statute.

STATUTES INVOLVED

Section 3466 of the Revised Statutes and Section 26 (a) of the Illinois Unemployment Compensation Act involved here are set forth in the Collector's brief in opposition in *People of the State of Illinois, ex rel. Robert L. Gordon, Director of Labor* v. *Nigel D. Campbell, Collector of Internal Revenue*, No. 750, this Term.

STATEMENT

On January 9, 1939, the Advertising Review Publishing Company, a corporation, made a general assignment of its assets and property to William Fisher, trustee for the benefit of its creditors. The trustee reduced the assets to cash (R. 1–2). The Collector of Internal Revenue filed claims with the trustee for capital stock taxes in the sum of $58.73, plus interest, federal in-

surance contributions taxes in the sum of $1,065.52, plus interest, and federal unemployment compensation taxes in the sum of $1,284.36 plus interest. All of these taxes accrued in years prior to the assignment. The Director of the Department of Labor of the State of Illinois also filed claims with the trustee for unemployment compensation contributions due the State of Illinois in the amount of $721.29 plus interest. (R. 2–3.)

On February 11, 1942, the trustee filed an interpleader action in the Circuit Court of Cook County, Illinois, asking instructions of the court as to the distribution of the funds in his hands. The Director of Labor and the Collector of Internal Revenue were made defendants. (R. 1–4.) By stipulation the United States was made a party defendant and the Collector of Internal Revenue was dismissed. (R. 4–5.) On April 2, 1943, the Director filed a complaint in the Circuit Court to foreclose his statutory lien for unemployment contributions under Section 26 (a) of the Illinois Unemployment Compensation Act. (R. 8–16.) Notice of this lien had been filed with the Office of the Recorder of Deeds, Cook County, on March 23, 1943. (R. 11, 15–16.)

The two cases were thereafter consolidated (R. 16) and on order of the Circuit Court, the funds in the hands of the trustee amounting to $1,010.81 were impounded with the Clerk of the Court to abide the result of the suit (R. 19).

The court later entered an order that the lien of the Director be given priority to the extent of 90 per cent of the funds on deposit with the Clerk and that the United States have priority as to the ten per cent remaining. (R. 19.) The United States appealed from this order and the Supreme Court of Illinois reversed the decree of the Circuit Court, holding that the claim of the United States was entitled to priority over the claim of the Director. (R. 25–33.) A petition for rehearing was denied on September 17, 1945. (R. 40.)

ARGUMENT

The reasons set forth in the Collector's brief in opposition in No. 750 for denying the writ of certiorari in that case apply equally here and are not repeated.

In this case the Federal Government received priority with respect to federal unemployment compensation taxes as well as federal insurance contribution taxes, whereas in No. 750 the available funds after payment of federal insurance contribution taxes were turned over to the State and credited against the federal claim for unemployment compensation taxes. Since *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, modified in 68 R. I. 358, which petitioner asserts conflicts with the decision below, did not involve federal unemployment compensation taxes, this additional question in the present case creates no

conflict with the *Rivard* case, even if such a conflict would warrant review at this time. For the reasons set out in the brief in opposition in No. 750, we think it does not. The different result reached in this case and in No. 750 with respect to federal unemployment compensation taxes is attributable to the fact that in this case the time had expired during which a credit against federal taxes due could be claimed by reason of payments to an approved State body; in No. 750 the taxpayer could still claim the credit under the extension of time granted by Section 602 (b) of the Revenue Act of 1943. While the credit could still be claimed in No. 750, we think that fact does not justify the distinction drawn by the court, and that the federal claim should have received complete priority in both cases. (See Brief in Opposition in No. 750, pp. 10–11.) The issue of complete priority in No. 750 is not before this Court since the Federal Government filed no petition for a writ of certiorari in that case. The *Rivard* case upon which petitioner largely bases his request for certiorari not only did not involve federal unemployment compensation taxes, but the dictum of the court in that case with respect to such taxes had no apparent reference to a situation where, as here, possible claim for credit was barred.

In No. 750, the petitioner questioned the insolvency of the taxpayer and asserted that he

held a specific and perfected lien. These questions are not in controversy here.

CONCLUSION

The petition for a writ of certiorari should be denied for the reasons set forth in the Collector's brief in opposition in No. 750.

Respectfully submitted.

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